

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

TERWIN LEMAR BROWN,)	
)	
Petitioner,)	
)	1:09CV844
v.)	1:07CR122-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

**ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a federal prisoner, has submitted a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This motion cannot be further processed for the following reasons:

1. Motion is not on proper § 2255 form - Forms enclosed.
2. The page length of the memorandum or attachment exceeds the 20 page limit set out in LR 7.3(d).

The memorandum can be legibly handwritten on letter size paper. All pages are bound at the top and numbered at the bottom. The margin at the top shall not be less than one and one-quarter inches; all other margins not less than one inch. If printed or typed, text shall be in a fixed-pitch type size no smaller than ten characters per inch or in a proportional font size no smaller than 13 point. There shall be no more than 27 lines of regularly spaced text per page. L.R. 7.1(a).

Because of these pleading failures, this particular motion will be dismissed, but without prejudice to Petitioner filing a new motion properly following the 28 U.S.C. § 2255 forms, correcting the defects of the present motion. The Court has no authority to toll the

statute of limitation, therefore it continues to run, and Petitioner must act quickly if he intends to pursue this motion. *See Spencer v. Sutton*, 239 F.3d 626 (4th Cir. 2001). To further aid Petitioner, the Clerk is instructed to send Petitioner new § 2255 forms and instructions for filing a § 2255 motion, which Petitioner should follow.

There is one other matter to be addressed. Petitioner has filed a motion to be released on bail while his motion to vacate is pending. This motion should be denied.

IT IS THEREFORE ORDERED that the Clerk is instructed to send Petitioner § 2255 forms and instructions.

IT IS THEREFORE RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Petitioner filing a corrected motion on the proper § 2255 forms.

IT IS FURTHER RECOMMENDED that Petitioner's motion for release on bail be denied.

/s/ Donald P. Dietrich

Donald P. Dietrich, U.S. Magistrate Judge

November 13, 2009